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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

OCT 21 2003

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON

11 J.Z., a minor, by and through DAVID
12 GROESBECK, the proposed guardian
13 ad litem, and all others similarly
14 situated,

15 Plaintiffs,

16 vs.

17 NGUYEN VAN HANH, Ph.D., in his
18 official capacity as Director of the
19 United States Office of Refugee
20 Resettlement,

21 Defendant.

CS-03-0378-FVS

No.

COMPLAINT

CLASS ACTION

22 INTRODUCTION

23 1. This class action seeks declaratory and injunctive relief against the
director of the Office of Refugee Resettlement (ORR), within the United States
Department of Health and Human Services, for failing to provide the Plaintiff, and

1 other similarly situated juvenile immigration detainees, with services necessary to
2 address the youth's mental health needs, thereby placing the youth at risk for
3 significant harm, including suicide.

4 **JURISDICTION & VENUE**

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6 2. This Court has jurisdiction under 28 U.S.C. § 1331.

7 3. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2),
8 1391(e)(2), and 1391(e)(3).

9 **PARTIES**

10 4. Plaintiff J.Z. is 17 years old. He is a real party in interest in this case.
11 He is currently confined at Martin Hall, a privately-run juvenile detention facility
12 near Spokane, Washington, which houses juvenile immigration detainees pursuant
13 to a contract with the United States government.

14
15 5. David Groesbeck is J.Z.'s proposed guardian ad litem. Mr. Groesbeck
16 is an attorney admitted to practice before this Court, as required by LR 17.1(a).

17 6. Defendant Nguyen Van Hanh, Ph.D., is the director of the Office of
18 Refugee Resettlement, within the Administration for Children & Families, a
19 division of the U.S. Department of Health and Human Services in Washington,
20 D.C. He is responsible for ensuring that ORR fulfills the duties assigned to that
21 office under the law.
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FACTS

General Facts

7. A child under 18 who has no lawful immigration status in the U.S., with no parent or legal guardian in the U.S. available to provide the child with care and physical custody, is known as an “unaccompanied alien child” (also referred to as an “unaccompanied undocumented child”). 6 U.S.C. § 279(g)(2). Pursuant to the Homeland Security Act of 2002, responsibility for the placement and care of such children was transferred from the former Department of Immigration and Naturalization Services to the Office of Refugee Resettlement, effective March 1, 2003. 6 U.S.C. § 279.

8. Unaccompanied undocumented children may, in some circumstances, be held in a detention facility, pending the outcome of their immigration proceedings.

9. Martin Hall is a privately-run, secure juvenile detention facility near Spokane, Washington. It houses both unaccompanied undocumented children, as well as juveniles facing criminal charges or adjudicated delinquent, pursuant to contracts with the federal government and various counties in eastern Washington.

10. Some portion of the unaccompanied undocumented children detained in Washington have mental health needs that require attention from qualified

1 mental health professionals. Many have fled countries where they faced
2 abandonment, torture, abuse, or other atrocities.

3 11. ORR does not ensure that qualified professionals conduct meaningful
4 mental health screenings and suicide assessments on youth upon their arrival in
5 detention.
6

7 12. To the extent that youth receive mental health screenings and suicide
8 assessments upon their arrival in detention, ORR does not ensure that these
9 screenings and assessments lead to appropriate referrals and the provision of
10 necessary mental health services.

11 13. ORR does not ensure that an adequate number of qualified staff
12 members are available to deal directly with juveniles who have severe mental
13 health problems. See INS Juvenile Protocol Manual; Juvenile Detention and
14 Shelter Care Program, § 5, standard 3-JDF-4C-16 (1999).
15

16 14. ORR does not ensure that written, individual treatment plans are
17 developed by a qualified mental health practitioner for each juvenile requiring
18 close supervision. See INS Juvenile Protocol Manual; Juvenile Detention and
19 Shelter Care Program, § 5, standard 3-JDF-4C-30 (1999).
20

21 15. ORR does not ensure that mental health, psychiatric, and crisis
22 intervention services are available to unaccompanied undocumented children in
23

1 detention on an as-needed basis. See INS Juvenile Protocol Manual; Juvenile
2 Detention and Shelter Care Program, § 5, standard 3-JDF-5B-05.

3 16. Upon information and belief, it is Martin Hall's practice to notify
4 ORR about any significant event affecting an unaccompanied undocumented child
5 in its custody.
6

7 17. Upon information and belief, ORR receives copies of all records
8 created by Martin Hall pertaining to unaccompanied undocumented youth detained
9 in that facility.

10 18. Several unaccompanied undocumented children have attempted
11 suicide while in detention at Martin Hall. In most cases, these youth were placed
12 in isolation, on "suicide watch," but the federal officials responsible for their care
13 did not provide the youth with intervention or treatment from qualified mental
14 health professionals.
15

16 19. The Defendant knew, or should have known, about the lack of mental
17 health services for juvenile immigration detainees in Washington at the time, or
18 shortly after, he was assigned responsibility for the placement and care of these
19 youth. However, he has not taken the necessary steps to ensure that these youth
20 routinely receive necessary mental health services.
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1 Facts about Named Plaintiff

2 20. J.Z. is a 17-year-old Mexican national, seeking asylum and Special
3 Immigrant Juvenile Status in the United States.

4 21. J.Z. fled to the United States when he was 14 in order to escape severe
5 physical abuse by family members.

6 22. J.Z. was arrested in the U.S. and detained at Martin Hall on June 16,
7 2003. He remains confined at Martin Hall pending resolution of his immigration
8 claims.

9 23. Shortly after his admission to Martin Hall, J.Z. responded to a mental
10 health questionnaire, noting that he was sad and depressed, that he was thinking
11 about killing himself, and that he needed help to keep from killing himself while he
12 was in detention. In response to J.Z.'s answers on the questionnaire, the screener
13 recommended "special housing placement," but declined to refer J.Z. to a mental
14 health professional.

15 24. The day after J.Z. completed the mental health questionnaire, a
16 CDMHP (County-Designated Mental Health Professional) met with the youth to
17 assess whether he was at imminent risk of harm. Although the CDMHP concluded
18 that J.Z. "[did] not appear to be at imminent risk toward self or others," she noted
19 that he "would not confirm or deny thoughts of suicide" and that he "endorsed
20 thoughts of depression."
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1 25. Upon information and belief, ORR received a copy of J.Z.'s
2 completed mental health questionnaire and CDMHP report, but failed to provide
3 him with necessary mental health services to address his needs.

4 26. J.Z. tried to commit suicide twice in July, 2003, while confined at
5 Martin Hall.

6 27. During the first week of July, 2003, J.Z. tried to choke himself by
7 tying his sheets around his throat. Martin Hall staff place him in isolation, on
8 suicide watch.

9 28. On July 18, 2003, J.Z. attempted suicide by tying one end of a bed
10 sheet to his neck and the other end to his cell door. He pulled on the sheet in an
11 attempt to choke himself. Martin Hall staff placed him in isolation, on suicide
12 watch.

13 29. Martin Hall contacted ORR shortly after J.Z.'s first suicide attempt.
14 In addition, J.Z.'s pro bono immigration attorney spoke with ORR about the
15 suicide attempt. The ORR representative informed J.Z.'s counsel that they would
16 look into getting a counselor to see J.Z. on a regular basis. When ORR failed to
17 provide the necessary mental health services, J.Z.'s immigration attorney arranged
18 for a psychological evaluation to address J.Z.'s urgent mental health needs.

19 30. The psychologist who evaluated J.Z. at the request of his immigration
20 attorney diagnosed J.Z. with Major Depressive Disorder, Recurrent, Severe with
21

1 Psychotic Features, as well as Posttraumatic Stress Disorder. She recommended
2 therapy and further assessment for psychotropic medications.

3 31. After the first psychological evaluation, arranged by J.Z.'s
4 immigration attorney, another psychologist, approved and paid for by ORR,
5 evaluated J.Z. and diagnosed him provisionally with Adjustment Disorder with
6 Depressed and Anxious Mood, with Oppositional-Defiant behavior traits, as well
7 as Posttraumatic Stress Disorder, Delayed Onset. This psychologist recommended
8 that J.Z. be prescribed psychotropic medications and stated that J.Z. was "in dire
9 need of an individual counselor."
10

11 32. Despite two suicide attempts and recommendations from two
12 psychologists, ORR still has not provided J.Z. with professional mental health
13 treatment. In fact, J.Z. did not meet with a psychiatrist until October 7, 2003,
14 almost four months after ORR became aware that he was suicidal.
15

16 Facts Pertaining to Other Unaccompanied Undocumented Children Detained at
17 Martin Hall

18 33. Dylan McNiffe is a 16-year-old boy who was detained at Martin Hall
19 beginning in December, 2002.

20 34. Martin Hall staff were aware that Dylan had a history of physical and
21 sexual abuse, but did not provide him with mental health services.
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1 35. In March, 2003, Dylan had an episode where he became upset and
2 started throwing things. Martin Hall staff restrained him and placed him in a
3 padded cell overnight. Dylan was then placed in IMU, on suicide watch, for four
4 days. However, ORR did not arrange for Dylan to receive mental health services
5 during that time.
6

7 36. Chris Chen was detained at Martin Hall for six months, beginning in
8 July, 2002. He was 15 years old at the time.

9 37. In October, 2002, Chris got very depressed and made himself pass out
10 by holding his breath and choking himself. He was placed in the IMU on suicide
11 watch for one day, but did not receive any mental health services.
12

13 **CLASS ACTION ALLEGATIONS**

14 38. J.Z. brings this action on behalf of himself, and all others who are
15 similarly situated, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2). The Plaintiff
16 provisionally proposes the following class definition:

17 All youth, under 18, who currently are, or in the future
18 may be, confined at a detention facility in Washington
19 State, under the jurisdiction of the U.S. Department of
20 Homeland Security and/or the U.S. Department of Health
and Human Services, who have mental health needs.

21 39. This is an appropriate class action because the proposed class is so
22 numerous that joinder of all members is impracticable.
23

1 40. There are questions of law and fact common to the class, including
2 whether the Defendant's failure to provide adequate mental health services to
3 juvenile immigration detainees with mental health needs violates the youth's rights
4 under the Fifth Amendment to the U.S. Constitution.

5
6 41. The claims of the named Plaintiff are typical of the claims of the class.

7 42. The named Plaintiff will fairly and adequately protect the interests of
8 the class.

9 43. The named Plaintiff has available competent counsel with experience
10 in civil rights, prisoners' rights, and immigration law who are willing and able to
11 protect the interests of the class.

12
13 44. The Defendant has acted or refused to act on grounds generally
14 applicable to the class, thereby making appropriate final declaratory and injunctive
15 relief with respect to the class as a whole.

16 **CAUSES OF ACTION**

17 45. The Defendant's failure to ensure that unaccompanied undocumented
18 children in detention in Washington State receive adequate mental health
19 screenings and suicide assessments, as well as necessary mental health
20 interventions and treatment, violates his duties under section 462 of the Homeland
21 Security Act of 2002, 6 U.S.C. § 279, actionable under Bivens v. Six Unknown
22 Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).
23

47. The Defendant's failure to ensure that unaccompanied undocumented children detained in Washington receive regular counseling and appropriate mental health interventions when necessary violates the Plaintiffs' rights under the Stipulated Settlement Agreement in Flores v. Meese, No. CV 85-4544-RJK(Px) (C.D. Cal. March 23, 1993) (stipulated settlement agreement).

The Plaintiff asks this Court to grant the following relief:

49. Issue a declaratory judgment, declaring that the Defendant has

violated the Plaintiffs' right to receive necessary mental health care, guaranteed under the Fifth Amendment, 6 U.S.C. § 279, and the Stipulated Settlement Agreement in *Flores v Meese*.

50. Issue an injunction requiring the Defendant to ensure that all members of the Plaintiff class receive professional, effective mental health screenings,

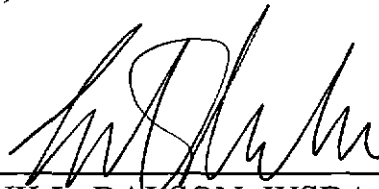
1 including assessments for suicide risk, as well as necessary mental health
2 interventions and treatment;

3 51. Award Plaintiffs all reasonable costs and attorney fees incurred in
4 connection with this lawsuit, pursuant to the Equal Access to Justice Act, 28
5 U.S.C. § 2412(d), or any other applicable law; and
6

7 52 Grant Plaintiffs any other relief the Court deems appropriate and just.

8
9 Respectfully submitted this 21st day of October, 2003.
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11
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17 HANK L. BALSON, WSBA #29250
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20 Attorneys for Plaintiffs
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CERTIFICATE OF SERVICE

I, ATIENO ODHIAMBO, certify under penalty of perjury under the laws of the State of Washington that a copy of the foregoing Complaint was served upon Defendant, via Federal Express, properly addressed and prepaid, this 21st day of October, 2003 to:

Nguyen Van Hanh, Ph.D., Director
Office of Refugee Resettlement
Administration for Children & Families
370 L'Enfant Promenade, SW
6th Floor/East
Washington, DC 20447

Signed this 21st day of October 2003 at Spokane, Washington.



Atieno Odhiambo